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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-1371

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioner

vs.

GREAT COASTAL EXPRESS, INC.

Respondent

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Fourth Circuit

BRIEF FOR GREAT COASTAL EXPRESS, INC. IN OPPOSITION TO PETITION

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I. The Uncontested Factual Background

A. The Petition Purposefully Avoids Bringing To The Court's Attention Crucial Facts That Were Determinative Of The Issues Presented In The Courts Below, And Accordingly, Creates Only A Fictitious "Question" For Consideration Here

The Court of Appeals decision which the Union wishes this Court to review involved nothing more than the

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application of well-established principles of law to an uncontested set of facts.

The Union's efforts to secure from this Court a review of that decision is not, in reality, based upon the grounds enumerated at various points in its Petition. Rather, this effort stems entirely from one all-pervasive circumstance, and that is: Since the Union did not, and could not, refute the crucial evidence presented at the trials below, it has adopted the tactic, at every level of this case, and in its Petition to this Court, as well, *of adamantly and persistently refusing to acknowledge the existence of these undeniable facts* and the legal consequences which inevitably and inexorably flow from them.

As a consequence of the Union's resorting to this tactic, it has not presented to the Court — indeed it does not mention — the true issue upon which the case was tried, and the Union was defeated, in the proceedings below. The Union never appealed from the adverse decision rendered in the Trial Court which held, upon the uncontested evidence, that all of the damages sustained by this Respondent resulted directly and proximately from wide-spread, persistent, and successful secondary boycotting activities with which the Union supported its strike.

Rather, on its appeal to the Court below, and in its Petition to this Court, the Union has substituted a new "issue" which never arose upon the evidence at any point in the case.

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B. Statement Of The Case*

1. The Strike

The plaintiff, Great Coastal Express, Inc.,[1] is a common carrier engaged in hauling general commodity freight. The Company's business consists primarily of transporting such freight between its southern territory in Virginia, and its northern territory, which includes the State of New Jersey, New York City, portions of New York State and Connecticut and eastern Pennsylvania, including Philadelphia (88)[2].

The Company's home office and main terminal are located in Richmond where all of its over-the-road drivers are based (88). The Company's only other terminals were in Philadelphia and Jersey City.

In 1970, negotiations between the Company and the International Brotherhood of Teamsters[3] for a new collec-

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*As already noted, the Respondent takes strong exception to the Petitioner's "Statement of the Case" and to its assertion with respect to the "Questions Presented." Due to the nature of this case, however, it would not be feasible, in Respondent's view, to undertake at this point a complete restatement of the essential facts or of "questions presented." However, the following is a summary of the basic factual background which will serve to demonstrate that in truth, no real question or issue has been presented to this Court.

[1]Hereinafter called "Great Coastal" or the "Company."

[2]Undesignated references are to page numbers in the Joint Appendix filed in the Court of Appeals. References preceded by the letter "A" are to the original transcript of the first trial, and references preceded by the letter "B" are to the original transcript of the second trial.

[3]The Petitioner — hereinafter called "Teamsters" or the "Union."

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tive bargaining agreement reached an impasse. The Union called a strike which commenced on August 9, 1970 (120).

Initially, for a brief period, the Union restricted its strike activities to primary picketing at the Company's terminal locations. This was totally ineffective and the Company continued to operate substantially as usual (122-128, 718-720).

At Richmond, employees and other persons seeking to transact business with the Company willingly crossed the Union's picket line. In its northern territories, the Company instituted the practice of making direct pickups and deliveries, thereby making unnecessary any substantial use of the picketed Jersey City terminal (119-121, 124, A.106-107). At all of the terminals, the Union had ample opportunity to advertise its dispute to all persons entering and leaving the terminal property (128-129).

Immediately upon realizing that the primary pickets were unable to halt or curtail the Company's operations, the Union proceeded to employ ambulatory pickets to rove throughout the Company's territory, following its trucks to the secondary business locations of Company customers. The Teamsters put William A. Hodson, the President of the Richmond Local, in direct charge of the strike and the roving pickets (A.600).

These pickets were divided into teams and stationed at locations along the routes between Virginia and New York. A fund was maintained by the Union to finance them. Usually, Company trucks proceeding from Virginia to the Company's northern territory were picked up and followed by these pickets (393, 413-414). In other cases, the Union

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secured information from unknown sources as to the destination of Great Coastal trucks, and the roving pickets proceeded directly to those points and waited for their arrival (235, 305).

At both trials below, it was established without contradiction — and without challenge by the Union — that, throughout the entire eight-month strike, virtually all trucks attempting to pick up or deliver in the northern territory were followed or met by ambulatory pickets (237, 279, 576, 578, 532-583, 585, 587-593, 602, 720, 731-735).

This effort by the Union proved very successful. At nearly every location in the northern territory to which Company drivers were followed by roving pickets, the employees of secondary employers immediately stopped working, or refused to handle Great Coastal freight, or both. The result was that, on hundreds of occasions, north-bound freight had to be hauled back to Richmond because it could not be delivered (734-735, 744-745, 807, 812-813).

The fact that this pervasive ambulatory picketing virtually closed Great Coastal's business remains uncontested.

Furthermore, the Company presented proof that all of the damages it suffered during the strike resulted proximately and directly from the Union's ambulatory picketing and that no such damages resulted from primary strike activities by the Union (718-721, 731, 740, 743-744, 763-764, 777-778, 789-790, 810-813). Although the Union had access to all of the Company's records for months before the trial, again it offered — and could offer — no evidence to contradict the Company's proof on that subject.

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2. The Unlawful Purpose And Objective Of The Union's Ambulatory Picketing

There being no conflict in the evidence regarding these matters, the only question left for resolution in the District Court trials was this: — Did the Union through its ambulatory pickets purposefully induce or encourage employees of Great Coastal's customers to engage in strikes or refusals in the course of their employment to handle Great Coastal's freight with *an* object of forcing or requiring those customers to cease doing business with Great Coastal? Labor Management Relations Act, as amended, 29 U.S.C. §158(b)(4)(i)(B).

The Union did not introduce any evidence on that subject either. Instead, it elected to stand on the mere argument that its ambulatory picketing was legal and protected by virtue of the decision of the National Labor Relations Board in *Moore Dry Dock Co.*, 92 NLRB 547 (1950). From the very outset of this case, the Union has steadfastly refused to recognize the limited scope and true meaning of *Moore Dry Dock*, and has proceeded on the assumption that the "standards" enumerated in that decision constitute substantive law authorizing ambulatory picketing, *regardless of its purpose*, as long as the "standards" are observed.

In this the Union is seriously in error. Through a long series of Board and Court decisions,[1] it has been made perfectly clear that in *Moore Dry Dock*, the Board merely

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[1]Illustrative cases are cited and reviewed later in this Brief.

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undertook to set forth several criteria — sometimes referred to as "guidelines" or procedural "standards" — to be used as an aid in analyzing circumstantial evidence to determine whether the ambulatory picketing in a particular case did or did not have an unlawful purpose or object.

In the present case, however, both the Court and the juries below were spared the task of reviewing and weighing circumstantial evidence to ascertain this Union's purpose. The unlawfulness of the Union's purpose and object was firmly established not only by massive proof offered by Great Coastal without contradiction or contest, but also by unequivocal admissions and corroboration by the Union's own witnesses and documentation. Hence, *Moore Dry Dock* has never had any relevance to this case.

In presenting its case-in-chief at the first trial, the plaintiff had no means of knowing just what the Union's defense might be. The plaintiff, therefore, called some of its drivers and customers as witnesses to prove the scope, purpose and effect of the Union's ambulatory picketing. These witnesses testified to hundreds of incidents where they had been thwarted in making pickups and deliveries, including eight specific cases where they overheard direct, explicit appeals by Union representatives to secondary employees to refuse to handle Great Coastal's freight (Pet. pp. 4-5, 167-168, 195-198, 231-233, 249-250, 265-266, 282-283, 331-334).

All of this testimony proved to be unnecessary, or at least only cumulative, when the Union called its one witness, Union President Hodson. A composite of Hodson's

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admissions on cross-examination, and the other evidence which corroborated him, established beyond any doubt that the Union's picketing was massive in its scope and effect, and its purpose was unlawful in its entirety.

In regard to the scope of the picketing, Hodson confirmed, as has been noted above, that "there was so much of it . . . we would follow the truck from the time it left the terminal until it reached its destination . . . and we would establish a picket line outside the gate where the truck went in and picket from the time the truck arrived until it left" (393). He also conceded that the Union "had pickets following Great Coastal's trucks throughout its system . . . over a period of eight months with some little bit of time out" (413).

It is most important to note that Hodson admitted the Union's ambulatory picketing was not "worthwhile" or "effective" unless it induced employees of secondary employers to engage in work stoppages and refusals to handle Great Coastal's freight (423-424, 435-437, 875-885). He emphasized that such picketing would be "effective" only if employees of Great Coastal's customers would "respect" the picket lines by refusing to work and refusing to load and unload Great Coastal's trucks while the pickets were present (423-424, 435-437, 875-885). Accordingly, throughout his cross-examination, Hodson repeatedly admitted that it was the Union's purpose to make the ambulatory picketing successful by securing the respect and cooperation of secondary employees.

3. The Union's Unlawful Direct Appeals And Orders To Secondary Persons

Various Union officials, up to the very top levels of authority, assisted Hodson in securing the "respect" for ambulatory picket lines which was necessary to choke off Great Coastal's business completely. Detailed plans were made and put into effect for efficient operation of the pickets.

The Union obtained and circulated among Union representatives throughout Great Coastal's system, a list of its customers (587-592, P. Ex.[1] 58). It mailed to these customers what is known in the trucking industry as a "hot cargo" letter (131-135, 937, P. Ex. 90). The uncontradicted testimony established that this letter is a continuation of the Teamsters' long-standing "hot cargo" policy and that persons who receive such a letter can expect labor trouble if they do business with the struck company (96-98, 313-316).

On September 28, 1970, Hodson wired Frank E. Fitzsimmons, Acting President of the International Union, notifying him that the ambulatory pickets were being removed (580, 868, P. Ex. 52). This was followed by an explanatory letter on the same day wherein Hodson advised the International Union that "As you may or may not know, the ambulatory pickets are not effective unless we get cooperation from the other unions that represent the people where the deliveries are being made" (582-583, 868, P. Ex. 54). In that letter, he further advised that "the

[1]Plaintiff's exhibits.

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local union is still willing to maintain the ambulatory pickets as soon as we get enough cooperation so that they will be effective." The ambulatory picketing was immediately resumed (576, 578, 582-583, 585, 587-593, 602, 891-892).

In September, Hodson orally complained to the International Director, Joseph Trerotola, that the picketing was not effective because he still was not receiving the cooperation he desired from Teamster locals who represented employees of Great Coastal's customers (434-435, 892-893). Therefore, on October 28, 1970, Trerotola wrote all of the hundreds of Teamster locals under the jurisdiction of its Joint Councils 16, 53, 73 and 83, advising them that Great Coastal was being struck because, after having been a party to the Union's National Master Freight Agreement, it had "attempted to withdraw and negotiate separately" (433, 491, 511, 587-592). Trerotola continued:

> "I am enclosing a list of the companies who are doing business with this Employer, even though there is a strike in progress which is now more than two months old. Local 592 has had pickets following the trucks and picketing has not been entirely successful because of the manner in which the Employer is operating. With your assistance it may be possible to resolve this dispute in the near future" (587-592, 868, P. Ex. 58).

In his deposition which was introduced into evidence at both trials, Trerotola as much as admitted that his request for "assistance" meant that the locals were to see that

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their members "respected" the roving pickets by engaging in work stoppages while they (the pickets) were present (508-509, 517-518, 870-871).

In his weekly report to the International Union on November 2, 1970, the Secretary-Treasurer of Local 592 advised that "the picket captains on roving pickets advise me they are getting cooperation from Local 107, but are not receiving any support from Local 641" (593, 868, P. Ex. 59).

As an additional step to involve secondary employees in the strike, Hodson, pursuant to Trerotola's request, forwarded Great Coastal's customer list to John Mongello, business representative of District 65, Pulp and Sulfide Workers in New York, and asked Mongello for "any assistance you can give" (601, 868, P. Ex. 71).

On February 19, 1971, Hodson wrote Trerotola, with copies to Fitzsimmons, naming a number of Teamster locals which represented employees of Great Coastal's consignees. He also named locals of other unions who represented some of these employees (868, P. Ex. 74). Hodson then added:

> ". . . We are following Great Coastal's trucks from Richmond into the Philadelphia, New Jersey, and New York areas, and picketing the trucks when they attempt to make deliveries. However, the majority of the Local Unions claim they are unaware of our strike and refuse to respect our picket lines. If we had someone acting as a coordinator who could contact the various Unions since we usually know in advance where the loads are

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going and the approximate delivery times, we feel this would be very helpful" (605).

Hodson admitted that the purpose of this letter was to report to Trerotola that the majority of Great Coastal's northern customers were unionized and that he wanted Trerotola to help "see that these local Unions did get in line and respect [the] picket lines" (426). He added, "If they respected the picket line they wouldn't be working" (426).

It is clear that the Union was not satisfied with shutting down the plaintiff's business by appeals from ambulatory pickets to secondary employees which was accomplished at some considerable expense to the Union. The purpose of all of these direct appeals to secondary employees was summarized in Hodson's admission that with such appeals he was trying to get cooperation "through other local unions" so that Great Coastal's freight "would be shut off without the [expense of] roving pickets" (444-445, 886).

With the "cooperation" and "respect" which it received from secondary employees, pursuant to the foregoing coordinated efforts, the Union achieved its announced goal of a "completely effective" strike against Great Coastal. Freight moving to and from the Company's crucially important northern territory was virtually shut off (126, 734-735). Revenues from large bulk customers, who did many thousands of dollars in business each month prior to the strike, and who attempted to do so after the strike began, dwindled to zero once the "assistance" called for by Trerotola began having its effect (848-865).

The evidence, which came from the Union's files and from the mouths of its own officials, was so overwhelming that, at the trials, the Union could say little or nothing to rebut or explain it. At neither trial was the Union able to offer a shred of evidence to justify the directives and orders from top International Union officials, channeled through hundreds of locals, to thousands of secondary employees, requiring them to "respect" the ambulatory pickets and to "cooperate" with them by striking and refusing to handle Great Coastal freight in their presence.

At the first trial, the Union responded to the description of the activities of its ambulatory pickets with the irrelevant claim that, in effect, the pickets had been *instructed* to comply with *Moore Dry Dock* standards.

By all of this, it has been proved that, in regard to liability, the first jury was never presented with a close question, the outcome of which might conceivably have been influenced by the evidence on violence that the Trial Court excluded from consideration. Indeed, that jury had no real choice in the matter. Under the circumstances, if it had found in favor of the defendant on the liability issue, most assuredly the Trial Court would have been bound to set that finding aside, to avoid reversible error.

In its Petition, the Union goes to great extremes in attempting to create the impression that the second jury did not have the benefit of any evidence relied upon by the first jury in finding the Union guilty of misconduct. This fiction was advanced for the purpose of manufacturing a factual basis for the Union's tediously elaborate argu-

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ment that the second jury could not have found a causal connection between the unlawful activities and the damages it awarded.

The truth is, however, that at the second trial, the jury had before it all the evidence that was before the first jury concerning liability and proximate cause; only the *form* of the evidence was different.

Understandably, at the second trial, the Union did not put Hodson on the stand; therefore, the plaintiff called him as an adverse witness (873-909). Hodson again admitted that the ambulatory picketing which persisted throughout the Company's system for eight months, aided by other forms of appeals to secondary employees, had the purpose and effect of shutting off the Company's freight. In light of that, it would have been a useless cumulation of evidence, and a waste of court time, to call individual drivers and customers to repeat their experiences at customers' places of business.

With that exception, as the Joint Appendix shows, all liability and damage evidence was readmitted and presented to the jury at the second trial — including the boycott directives of Union officials and the uncontested evidence that all Company damages flowed directly from secondary boycotting and that none resulted from primary picketing (868, 876, B. 226, B. 271, B. 275).

Upon this state of the record, the second jury also was bound to find, as it did, that massive secondary boycotting occurred and did, indeed, directly and proximately cause extensive damages to the plaintiff's business.

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On the surface, it may well seem surprising that the Union could have defaulted so completely in presenting any defense to the proof that unlawful activities destroyed the plaintiff's business. However, the reason for this default is that it was the Union's primary defense, steadfastly maintained until it reached this Court, that there was insufficient evidence of agency to hold the International Union liable for the conduct of the active participants in the unlawful activities. Indeed, the Union made no serious contention either that the acts did not occur, or that they did not wreak severe damage on the plaintiff.

In its appeal to the Court below, the Union's primary defense remained that there was no sufficient showing of agency to hold the International liable.[1] After the Union lost its appeal, the case took a bizarre turn. The agency argument has been abandoned completely.

To support all of its remaining arguments, the Union has now resurrected its misconceived and thoroughly discredited proposition that, because ambulatory pickets were *instructed* to comply with *Moore Dry Dock* standards, all roving picketing not coupled with explicit appeals or threats to secondary employees was automatically lawful (Pet., pp. 4-5).

It is an undeniable fact, therefore, that the Union is appealing to this Court with respect to an "issue" upon which it defaulted and lost at the trial level — an "issue"

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[1]The argument which is now made to this Court in the Union's Petition was added in that appeal, but was little more than "makeweight."

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with regard to which it never appealed before this time. To disguise all this, the Petitioner has resorted to an inexcusable sleight-of-hand. The Union merely alludes in passing to *Moore Dry Dock* and then pretends that the doctrine made *it* the victor in the Trial Court and the Court of Appeals, not only as to the ambulatory picketing itself, but also as to direct boycotting orders and "hot cargo" letters as well.

The preposterous nature of this maneuver is clearly apparent from the face of the record, but it is squarely upon the basis of it that the Union feels free to assert and reassert to this Court, without explanation or qualification, that there was evidence below of only "eight" instances of "possible" violations of the Act.

II. Argument

A. Upon Consideration Of All The Relevant Facts, The Decision Reached By The Court Below Was Mandated By Well-Established Principles Of Law

Clearly, the method used by a union to induce or encourage secondary employees to engage in boycotting activity is absolutely immaterial to the question of legality.

> "To exempt peaceful picketing from the condemnation of §8(b)4(A) as a means of bringing about a secondary boycott is contrary to the language and purpose of that section. The words 'induce and encourage' are

broad enough to include in them every form of influence and persuasion. . . ."

International Brotherhood of Electrical Workers, Local 501 v. National Labor Relations Board, 341 U.S. 694, 701 (1951)

The orders from top Union officials to thousands of secondary employees requiring them to engage in strike activities were obviously and blatantly violative of the Act. 29 U.S.C. §158(b)(4)(i)(B). Certainly, also, the "hot cargo" letters sent by the Union to Great Coastal's customers were, under the evidence already described, additional violations. 29 U.S.C. §158(b)(4)(ii)(B). And, nothing could be clearer than that appeals made through ambulatory pickets are not exempt from the proscription of Section 8(b)(4), either by the statute or by the *Moore Dry Dock* principle.

"Picketing may induce action of one kind or another, irrespective of the ideas which are being disseminated. . . . But the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. The loyalties and responses evoked and exacted by picket lines are unlike those flowing from appeals by printed words. . . . Picketing of a neutral employee, however peaceful, is given no inherent exemption from the prohibition against secondary boycotts."

National Labor Relations Board v. Dallas General Drivers, Warehousemen & Helpers, Local No. 745, 264 F. 2d 642, 647-648 (5th Cir. 1959)

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" '[*I*]*f there is an expectation or a hope or a desire that employees of the secondary employer will be induced or encouraged to take considered action* so that the secondary employer will cease doing business with the primary employer, *then the Act bars that activity.* . . .'

"We think it clear that the jury could infer from the course of conduct which has been outlined above that there was at least 'an expectation or a hope or a desire that employees' of the other crafts engaged on these several jobs would take the action which they actually did take—that is to quit working behind the picket signs.

"It was, therefore, not error for the trial court to submit the issue to the jury whose finding is determinative of the question" (emphasis added).

Local 290, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Oolite Concrete Company, 341 F. 2d 210, 212 (5th Cir. 1965)

"The question here, in simple terms is: Was the conduct of the union and the picketing which took place at the gate to the job site done with the object of forcing or requiring Jones to cease doing business with Schilling? . . . A review of the record, and especially the facts heretofore recited, discloses that the proof was sufficient to create issues for the jury."

Local 290, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, et al. v. I. E. Schilling Co., Inc., 340 F. 2d 286, 287, 289 (5th Cir. 1965)

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". . . [It] is also conceded that if the union did have the purpose of forcing or coercing Gulf Coast to sever its ties with Gulf Electric, and the union's picketing was designed to accomplish that purpose, then the union's actions amounted to a secondary boycott, prohibited by Section 8(b)(4)(i) and (ii)(B) of the Act.

"The Supreme Court, and this Court, have made clear that the key factor is the *objective* of the union activity, whether it is aimed at the primary employer or whether it is also aimed at pressuring the secondary employer. N.L.R.B. v. International Rice Milling Co., 341 U.S. 665, 672, 71 S. Ct. 961, 95 L. Ed 1284 (1950); Seafarers' International Union v. N.L.R.B. [Salt Dome], 105 U.S. App. D.C. 211, 216, 265 F. 2d 585, 590 (1959). . . ."

International Brotherhood of Electrical Workers, Local 408 v. National Labor Relations Board, 413 F. 2d 1085, 1087, 1089 (D.C. Cir. 1969)

B. The Principal Defense Relied Upon By The Union Throughout The Proceedings Below Is Not Remotely Related To The Defenses Urged Upon This Court As Reasons For Review Under Writ of Certiorari

As noted earlier, the Union, throughout both jury trials and in the Court of Appeals, relied primarily upon the contention that there was insufficient evidence to hold the International Union responsible for the damages inflicted

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upon Great Coastal by the secondary boycott activity. At each level, this contention was found to be without merit.[1]

In its Petition to this Court, that issue has been abandoned, and the Union now relies upon two propositions which, on the surface, appear to be separate and distinct, but, upon closer examination, will be found to stem from the same basic assumptions that have been shown in earlier portions of this brief to be wholly invalid. Accordingly, the Union has not presented to this Court any appropriate grounds for a further review of the case.

1. The Court Of Appeals Properly Found That It Was Not An Abuse Of Discretion In This Case For The Trial Court To Order A Second Trial As To The Damage Issue Without Setting Aside The Jury's Verdict On Liability

Upon defendant's motion at the conclusion of the first trial, the Court set aside the verdict in part upon a finding that the amount of damages awarded by the jury "was substantially out of touch with damages allegedly proven" (App. Pet. 6a). The Court was then faced with the question of how best to proceed with the case. After noting that there was "proper precedent under §303 for a remittitur," the Court concluded that in this case "a remand for new jury determination as to damages is appropriate" (App. Pet. 7a). Upon appeal, the actions and reasoning of the

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[1]See Appendix to Petition for Writ of Certiorari (hereinafter, "App. Pet."), pp. 2a, 3a, 4a-5a, 17a, 22a-23a.

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Trial Court were carefully examined. After thorough consideration of the factual circumstances involved and of the legal principles applicable to such situations, it was found that "the ruling of the district court as it awarded a partial new trial was not an abuse of discretion" and was "free from exception" (App. Pet. 24a-30a).

None of the Union complaints concerning the second trial escaped the attention of the Court of Appeals, and each was answered by the Court upon well-reasoned analysis, and was rejected upon sound legal authority. Therefore, it would serve no useful purpose to attempt here a restatement of the Court's analysis.

However, there are certain specific assertions made on this point in the Petition as to which further observations may be appropriate by way of response.

First, the Union, relying heavily upon portions of the opinion of this Court in *Gasoline Products Company, Inc. v. Champlin Refining Company*, 283 U.S. 494 (1931), attacks the decision of the Court of Appeals upon the asserted ground that the first jury's verdict was found by the Trial Court to have been "infected" by improper considerations—specifically, evidence of strike violence which was withdrawn from jury consideration during the trial; and that the Court of Appeals should not have substituted its own speculation as to what caused the excessive damage award, but should have ordered a new trial on all issues—i.e., liability as well as damages.

In the first place, this grossly mischaracterizes what each of the Courts said and did. The Trial Court expressed the

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opinion that "the jury, while well intentioned, was in spite of the Court's instructions to the contra, influenced *in its consideration of damages* by the gross and vicious conduct attributed to the members of the local union and their sympathizers" [emphasis added] (App. Pet. 6a).

At no point did the Court indicate an opinion that the *liability* portion of the verdict was influenced by the evidence of violence. And obviously, that was *not* the Court's opinion, otherwise it would not have ruled—as it did—that the verdict should stand with respect to its finding of Union liability.

Furthermore, the Court of Appeals obviously did not substitute its own speculation in place of the Trial Court's finding as to the cause of the excessive verdict, as the Petition charges (Pet. p. 14). Its view of the matter coincided with that of the Trial Court, and the criticism expressed in the Petition (at 23-24) is entirely unjustified.

Finally, on this portion of the Union's argument, it is important to note that, in light of the overwhelming and uncontradicted evidence clearly establishing Union liability, the jury had no real choice but to find in the Company's favor on this issue. As demonstrated earlier in this brief, a ruling by the Court setting the entire verdict aside would have been reversible error because, upon the basis of the evidence before the jury, the plaintiff would appear to have been entitled to a directed verdict on the liability issue. Surely, then, the ruling which the Court did make could not possibly be held to have constituted an abuse of discretion.

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The Petition also relies upon the *Gasoline Products* case, and others, for its extensive argument that it was improper in this case to limit the second trial to the issue of damages because that issue could not fairly be determined "without a redetermination of the liability issue" (see, e.g., Pet. 15, 20, 28).

Although stated in a number of different ways in the Petition, the basic contention of the Union is that the evidence on the two issues is so intertwined that a jury could not properly decide one separately from the other; and, that in this case the "damage jury" (as the Petition frequently describes the second jury) did not know which specific acts of secondary boycotting the "liability jury" had found to be legal and which illegal, and therefore could not know which acts it should consider in assessing damages.

Of course, it is readily apparent that once again the *entire* argument is necessarily predicated upon the all-important assumption that some of the plaintiff's damages were incurred as a result of lawful strike activity, and some by admittedly unlawful secondary boycotting, and that *no* recovery could properly be had unless the plaintiff met its burden of proving what portions of its damages were proximately caused by particular acts of the Union shown to be violative of §8(b)(4) of the Act.

The answer to all of this, of course, has already been made abundantly clear in earlier segments of this brief. First and foremost is the unassailable fact that *all* of the plaintiff's damages were the direct and proximate result of

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the Union's illegal secondary boycotting, and none was caused by permissible or protected strike activity.

Though perhaps unnecessary—since the foregoing is in itself a complete answer to the Petition's contentions on this point—the following additional facts may be noted.

First, as the record plainly shows, the second trial was not in fact limited to evidence on damages. All of the essential testimony and exhibits used at the first trial to establish beyond dispute the Union's liability for the illegal activities that caused all of plaintiff's damages was reintroduced and considered by the jury at the second trial. Therefore, the "damage jury" did have complete knowledge of the evidence upon which the first jury found liability.

Moreover, as the Court of Appeals properly observed, "at the second trial, the trial judge, out of an abundance of precaution, submitted not only the amount of damages, but also the proximate cause thereof to the jury. Thus there were the two issues tried at the second trial, not only the issue of the amount of damages" (App. Pet. 24a). To this, the Court of Appeals quite appropriately added that all of this was done with careful and complete instructions to the jury which were to the effect that it could not award any damages to the plaintiff except to the extent that the jury was satisfied from the evidence before it that "the losses resulted from illegal strike activity" (App. Pet. 24a-25a). Indeed, a reading of the full instructions to the second jury will reveal that they were far more favorable to the defendant than it was entitled to have—again, no doubt, out of an abundance of precaution on the part of the trial judge.

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2. This Case Is Clearly Distinguishable From *Local 20, Teamsters Union v. Morton*, And The Petition Fails To Show That The Court Of Appeals Decision Here Is In Conflict With That Of Any Other Circuit.

Local 20, Teamsters Union v. Morton, 377 U.S. 252 (1964) is so obviously distinguishable from the present case that only brief comment need be made here with respect to the Petitioner's extended arguments based on that decision.

First, the District Court in *Morton* tried the case without a jury and rendered a decision which in effect constituted a special verdict. Exact, separate amounts of monetary damages were found to have resulted from strike activity conducted by the Union at the premises of several of the plaintiff's customers. The activities at some of these locations were found to be violative of §303 of the Act; activities at other locations were not, although they did violate state law. No violence was involved. The Trial Court erroneously concluded that in such a factual situation the plaintiff was "entitled to recover damages measured by all of the profits lost as a result of the petitioner's total strike activity so long as some of that activity was unlawful." 377 U.S. at 255.

In the present case, there was no such situation. No special verdict was submitted to either jury, and whether there should have been was a matter strictly within discretion of the trial judge. And, as the Court of Appeals quite properly noted, the Union went through both trials without request-

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ing that the issues be submitted on a special verdict, and made no complaint about the use of the general verdict until the case was on appeal. (App. Pet. 26a).

Moreover, again it must be observed that in this case it was established that all of plaintiff's damages proximately resulted from conduct of the Union that violated the secondary boycott provisions of the Act. Under such circumstances, there is no occasion even to consider the principles for which the *Morton* case stands.

Despite its stained and tortured efforts to do so, the Union has failed in all attempts to show that the decision below is in conflict with that of any other Circuit, or with any decision of this Court. And overall, the Petition fails to present any circumstance indicating that there exists in this case any element or characteristic bringing it within that narrow range of situations which this Court considers to be justification for issuance of a writ of certiorari. (Supreme Court Rule 19.)

III. Conclusion

Upon all of the foregoing, Great Coastal Express, Inc., earnestly contends that a Writ of Certiorari should not be granted in this case.

Respectfully submitted,

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